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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,063

02/04/2004

Murray S. Toas

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12/08/2006

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EXAMINER

MATZEK, MATTHEW D

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

*h*

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/772,063

Applicant(s)

TOAS ET AL.

Examiner

Matthew D. Matzek

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11/27/2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence; which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 41-47, 49 and 50.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

*Matthew D. Matzek*  
*NORCA TORRES*  
**NORCA TORRES  
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: In the After-Final amendment dated 11/27/2006 Applicant has canceled claims 1-40 and 48. Claims 41-47 and 49-50 are currently active. Claim 41 has been amended to comprise a mixture of methylene-bis-thiocyanate and dodecylguanidine hydrochloride as active ingredients. This is the same chemical composition that was claimed in claim 42 before the final rejection was made. Therefore, the previous art rejection of claim 41 in view of Fay et al., Lewis et al. and Herbst has been withdrawn. The rejection of claims 41-47 and 49-50 in view of Fay et al., Lewis et al. and Ghosh et al. is maintained as shown in the Final Rejection dated 9/25/2006. Applicant argues that the Lewis reference does not disclose the claimed antifungal effectiveness because some of the examples exhibited some mildew growth. As Applicant has pointed out two of the five compounds do in fact prevent all growth of mildew and therefore do show that the levels of antifungal/antimicrobial agents disclosed by Lewis et al. do actually actually pass ASTM C1338 as instantly claimed. Also Examiner would like to draw attention to the concentration values provided in Table XIV are in PPM of the treatment solution, not the concentration in a treated paper facing. Applicant argues that the Lewis et al. and Ghosh et al. references have been improperly combined because there is no motivation to combine said references. Applicant asserts that since Ghosh et al. teach higher concentration levels than those instantly claimed one would not have found it obvious at the time the invention was made to have substituted the isothiazolin compounds in Lewis with a mixture of methylene-bis-thiocyanate and dodecylguanidine. As laid out in the final rejection, Lewis et al. teach the instantly claimed antifungal/antimicrobial levels to prevent all growth of possible contaminants. Ghosh et al. have been relied upon to teach that there are a number of chemicals and compositions that are capable of performing as antifungal/antimicrobials and that they may be used interchangeably as they are recognized as art recognized equivalents. Ghosh et al. have not been relied upon to teach sufficient chemical concentrations, rather just to show that a number of different chemicals may be used in place of one another to serve the same function.